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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

BARRY GENE COVINGTON, JR.

Defendant and Appellant.

D061860

(Super. Ct. No. SCS246380)

APPEAL from a judgment of the Superior Court of San Diego County, Kathleen M. Lewis, Judge. Affirmed.

I.

INTRODUCTION

Barry Gene Covington, Jr., pled guilty to one count of carrying a concealed dirk or dagger (Pen. Code, § 12020, subd. (a)(4))<sup>1</sup> (count 1). Covington also admitted having suffered one strike prior (§§ 667, subds. (b)-(i), 668, 1170.12) and one prison prior

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<sup>1</sup> All subsequent statutory references are to the Penal Code.

(§§ 667.5, subd (b), 668). The trial court sentenced Covington to four years in prison, consisting of the middle term of two years on count 1, doubled due to the strike prior. The court struck the prison prior pursuant to section 1385. We affirm.

## II.

### FACTUAL AND PROCEDURAL BACKGROUND

On March 8, 2011, the People charged Covington with carrying a concealed dirk or dagger (§ 12020, subd. (a)(4)) (count 1) and resisting an officer (§ 148, subd. (a)(1)) (count 2). The People also alleged that Covington had previously suffered a strike prior (§§ 667, subds. (b)-(i), 668, 1170.12) and five prison priors (§§ 667.5, subd. (b), 668).

On March 16, Covington and the People reached a plea agreement in which they agreed that Covington would plead guilty to carrying a concealed dirk or dagger (§ 12020, subd. (a)(4)) (count 1), that Covington would receive a sentence of no more than four years in prison, that it would be within the trial court's discretion whether to strike his strike prior and whether to grant probation at sentencing, and that the People would dismiss the remaining the charges and allegations.

That same day, the trial court held a change of plea hearing. At the hearing, which was held at approximately 10:55 a.m., the trial court asked Covington whether he had taken "alcohol, drugs, or narcotics in the past 24 hours." Covington indicated that he had taken some "pain pills" at approximately 2:30 that morning, and said that he did not know the name of the medication. The court asked Covington whether he was feeling "the effects" of the "pain killers." Covington responded, "No." The court then asked Covington, "Do you feel in any way impaired?" Covington responded, "No."

Covington also said that his attorney had read to him the plea forms and that he understood the forms. After Covington indicated that he understood the terms of the plea agreement and that he was willing to give up various constitutional rights, including his right to a jury trial, Covington pled guilty to carrying a concealed dirk or dagger (count 1). After Covington said that he would plead guilty, the trial court stated, "The form says you unlawfully carried upon your person a dirk or dagger. Is that what happened?" Covington responded, "Yes." Covington also admitted having suffered a strike prior and a prison prior related to a 1988 residential burglary conviction. The trial court accepted Covington's guilty plea, dismissed the remaining charges on the People's motion, and set the matter for sentencing.

Prior to sentencing, Covington filed a combined motion to strike the prior strike and statement of mitigation in support of a grant of probation. In his motion, Covington raised various arguments, including that the prior strike was remote in time and was not violent, that his criminal history was a result of an addiction to controlled substances, and that at the time of the current offense, he had been suffering from a mental condition that reduced his culpability for the crime.

At sentencing, defense counsel reiterated his request that the court "strike his very old strike and to give him a chance at probation." In opposing the motion, the People argued that Covington was "still having a problem taking responsibility for his actions," and noted that Covington had a long criminal history and had failed to remain law abiding after having suffered the strike prior in 1988.

The trial court denied the motion to strike the strike prior. In denying the motion, the court reasoned in part:

"I do think the defendant falls within the Three Strikes Law. While his prior strike is from 1988, it was a residential burglary. It was with a person who was in the home who shot at [Covington] and had to shoot him twice in order to stop him from coming at him. [¶] [Covington] received four years in state prison. Since then he's had continuous crimes and imprisonment. . . . [H]is record starts in 1985, and it goes to 1988 with the residential burglary. He goes to prison for burglarizing an elementary school. He has a firearm and drugs in 1994 with PCP and a handgun. In 1999 he goes to prison with—with a strike for four years for a firearm. [¶] In 2005 he arrests [*sic*] police officers while he's on parole. In . . . 2006 he possesses a controlled substance for sales, and goes to prison with the strike for 32 months. Then he gets out, and in 2010 commits a grand theft which pleads [*sic*] to a misdemeanor. In a police report it indicates he ripped an identification holder off a victim. And then we have this . . . offense. [¶] So he's been continuously . . . in possession of a gun and continuously resisting police and having no respect for the law. So I find him to be within the Three Strikes Law, and the . . . motion is denied."

The court proceeded to sentence Covington to the middle term of four years in prison, consisting of the middle term of two years on count 1, doubled on account of the strike prior. The court exercised its discretion under section 1385 to strike the prison prior.

On appeal, Covington's appointed appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). After counsel filed a *Wende* brief, this court granted Covington the opportunity to file a supplemental brief on his own behalf. Covington has not filed a supplemental brief.

### III.

#### DISCUSSION

*A review of the record discloses no error*

In his brief on appeal, Covington's counsel presents no argument for reversal, but asks this court to review the record for error, as mandated by *Wende, supra*, 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*), counsel lists as possible, but not arguable, issues: (1) "Was there [a] sufficient factual basis for Covington's plea?" (2) "Was Covington's plea knowing and voluntary?" (3) "Was Covington's attorney ineffective in connection with Covington's guilty plea in violation of Covington's Sixth Amendment rights?" (4) "Did the trial court abuse its discretion in not striking Covington's strike?"

A review of the record pursuant to *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738, including the possible issues listed pursuant to *Anders*, has disclosed no reasonably arguable appellate issues. Covington has been competently represented by counsel on this appeal.

IV.

DISPOSITION

The judgment is affirmed.

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AARON, J.

WE CONCUR:

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McINTYRE, Acting P. J.

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O'ROURKE, J.